IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 888 (SS) OF 2004

1. Smt. Sumitra Panwar, W/o Sri Bachan Singh, presently serving as Assistant Teacher, Primary School Khaand (Nagar Kshetra), Vikas Khand Bhatwari, District Uttarkashi.
2. Smt.Vijay Laxmi Joshi, W/o Sri Kanti Prasad Joshi presently serving as Assistant Teacher, Primary School, Khaand (Nagar Kshetra) Vikas Khand Bhatwari, District Uttarkashi. .....Petitioners.

Versus

1. Direcor, Basic & Secondary Education, Uttaranchal, Dehradun.
2. District Basic Education Officer, Uttarkashi.
3. Smt. Shambhavi Chauhan, W/o Sri Khajaan Singh Chauhan, serving as Assistant Teacher, Kanya Junior High School, Gyanshu (Maina Garh), Vikas Khand Bhatwari, District Uttarkashi. .....Respondents.

Sri Manoj Tiwari, Advocate for the petitioner.
Learned Standing Counsel for the respondents.

Dated: 03.03.2006

Hon'ble Rajesh Tandon, J.

By the present writ petition, the petitioners have prayed for a writ of mandamus commanding the respondent no. 2 to forthwith consider and promote them to the post of Assistant Teacher, Kanya Junior High School, Gyanshu (Maina Garh), Nagar Kshetra, Uttarkashi. Further prayer has been made for a writ of a mandamus directing the respondent no. 2 to recall the transfer order dated 18.12.2003 passed in respect of Respondent No. 3 and pass a fresh order regarding posting of Respondent No. 3 within the same local area where she was appointed and was serving. Further prayer has been made for a writ of mandamus commanding the respondent no. 2 to make transfer of Assistant Teachers Junior Basic Schools and Senior Basic Schools within the same local area in accordance

with the relevant Service Rules, so that chances of promotion of Teachers serving in the local areas are not adversely affected.

2. Briefly stated, the petitioner no. 1 was appointed on regular basis as Assistant Teacher, Primary School w.e.f. 16.01.1980 in Primary School, Birla Gali, Uttarkashi, Petitioner No. 2 was appointed on regular basis as Assistant Teacher, Primary School, Gandhi Vidya Mandir w.e.f. 10.09.1985, which are situated within Nagar Kshetra, Uttarkashi and the said institutions were being run by the U.P. Basic Education Board at the relevant point of time.

3. According to the petitioners they are continuously working as Assistant Teacher, Primary School in Nagar Kshetra, Uttarkashi although petitioners were transferred from one Institution to another from time to time in accordance with Rule 21 of U.P. Basic Education (Teachers) Services Rules 1981. Their services were confirmed on 01.06.1986 and 10.09.1987 respectively.

4. In the last seniority list circulated in the month of June, 2004, petitioner no. 1 (Smit Sumitra Panwar) stands at Serial No. 1 and petitioner no. 2 (Smt. Vijay Laxmi Joshi) at Serial No. 2 amongst teachers of Primary Schools serving within Nagar Kshetra, Uttarkashi. As such the petitioners rank at the top amongst teachers serving in Primary Schools in the said local area and they have a vested right to be considered for promotion against the available vacancies.

5. Counsel for the petitioners has submitted that a Girls Junior High School was opened by the Department at Gyanshu (Maina Garh) District Uttarkashi in December, 2003 under the Education programme. The said school was sanctioned for Kotegoan (Mautar), Vikas Khand, Mauri. However, pursuant to decision taken in the meeting dated 06.02.2003

presided over by District Magistrate, Uttarkashi, the School was opened in Gyanshu (Maina Garh) which falls within Nagar Kshetra, Uttarkashi.

6. Petitioners have submitted that since the new Junior High School falls within Nagar Kshetra Uttarkashi as such the Assistant Teachers serving in Primary Schools within said local area alone are entitled for promotion against the two posts of Assistant Teachers, Junior High School created for the said institution. Pursuant to the representation made by the persons serving as Assistant Teacher, Primary School within Nagar Kshetra, Uttarkashi, the respondent no. 2 sought guidance from State Project Director, Uttaranchal (Education For All), Education Board, Dehradun vide letter dated 06.01.2004.

7. Pursuant to the letter dated 06.01.2004 issued by the respondent no.2, Director of Education, Uttaranchal replied vide letter-dated 17.01.2004 stating that teachers serving on the post of Assistant Teacher in Nagar Kshetra, Uttarkashi alone shall be entitled for promotion.

8. The Chairman, Nagar Palika Parisahd Uttarkashi has also issued one letter-dated 27.12.2003 to the District Magistrate, Uttarkashi where by it was informed that teachers serving in Primary Schools within Nagar Kshetra are suffering stagnation for want of promotional avenues and a request was made to consider the claim of the teachers serving in the said local area for promotion against newly created posts.

9. On 02.01.2004, the petitioners alongwith teachers serving in Basic Schools within Nagar Kshetra Uttarkashi submitted one representation jointly to the respondent no.2 requesting him to consider the claim of teachers serving within Nagar Kshetra for promotion against newly created posts in accordance with seniority.

10. petitioner has submitted that respondent no. 2 has passed the order on 18.12.2003 whereby respondent no. 3 has been transferred as Assistant Teacher in Kanya Junior High School, Gyanshu (Maina Garh) which is in Nagar Kshetra from Kanya Junior High Schol, Gyonla, Vikas Khand, Dunda, District Uttarkashi. It has been submitted that respondent no. 3 was appointed in a different local area as she was appointed for rural area of District Uttarkashi, as such, she cannot be transferred to an Institution situated in Nagar Kshetra Uttarkashi in view of the Rule contained in Rule 21 of the relevant Service Rules.

11. However, liberty is given to the petitioners to file a fresh representation stating his grievances for promotion within a period of two weeks from the date of presentation of the certified copy of the order. If such a representation is filed, the same shall be disposed of by the concerned authority within a period of two months thereafter along with the representation dated 02.01.2004 in accordance with there relevant rules.

12. Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

03.03.02006

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